



## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-2012-0033]

### Notice of Intent to Grant a Buy America Waiver to the California Department of Transportation (Caltrans) and the Illinois Department of Transportation (IDOT) to Purchase Up to 615 Workstation Tables

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of intent to grant FRA Buy America Waiver.

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**SUMMARY:** FRA is issuing this notice to advise the public that it intends to grant Caltrans' and IDOT's request for a waiver from FRA's Buy America requirement, so that Siemens USA, the design, manufacturing, and delivery contractor, may purchase and install up to 615 non-domestic workstation tables that comply with certain design and safety standards for their single-level passenger railcars replacement project. Meeting these standards is required under the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), and FRA's grant agreement with Caltrans and IDOT.

**DATES:** Written comments on FRA's determination to grant a Buy America waiver to Caltrans and IDOT should be provided to FRA on or before **[INSERT DATE 5 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Please submit your comments to the U.S. Government electronic docket site at <http://www.regulations.gov>, in docket number: FRA-2012-0033.

Note: All submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT's complete Privacy Act Statement published in the *Federal Register* on

April 11, 2000 (65 FR 19477).

**FOR FURTHER INFORMATION CONTACT:** Faris Mohammed, Attorney-Advisor, Office of Chief Counsel, telephone: (202) 493-7064, email: Faris.Mohammed@dot.gov.

**SUPPLEMENTARY INFORMATION:**

The purpose of this notice is to provide the public with information related to FRA's intent to grant a waiver to Caltrans and IDOT from FRA's Buy America requirement, pursuant to 49 U.S.C. 22905(a)(2), to allow the use of up to 615 non-domestic workstation tables.

**BACKGROUND**

Caltrans and IDOT were awarded five separate grants from FRA to purchase rolling stock, including single-level passenger railcars, for use in intercity passenger rail service (Project). Caltrans and IDOT entered into a contract with Sumitomo Corporation of Americas (SCOA) to produce and deliver the railcars; SCOA entered into a subcontract with Siemens USA to manufacture the railcars. Siemens contracted with Baker Bellfield, a company headquartered in the United Kingdom (UK), to manufacture in the United States 615 workstation tables for the Project.

Like other European suppliers that Siemens has brought to the U.S. rail market, Baker Bellfield has committed to locate its production facility near the Siemens manufacturing facility in Sacramento, California. Baker Bellfield has already signed a lease for a property. Following localization, tables manufactured by Baker Bellfield at its facility in Sacramento would comply with FRA's Buy America requirements and would be installed in the FRA-funded passenger railcars.

Baker Bellfield intended to begin manufacturing the tables at its planned U.S. facility the week of March 9, 2020. However, due to complications relating to

the coronavirus disease 2019 (COVID-19) pandemic (*e.g.*, travel restrictions and restrictions on operating non-essential businesses), Baker Bellfield has been unable to open its Sacramento manufacturing facility on schedule. To meet contractual delivery schedules, Siemens proposes purchasing up to 615 tables made by Baker Bellfield in its UK-based facility, which do not comply with FRA's Buy America requirements. Once COVID-19 restrictions are lifted, Baker Bellfield intends to complete localization.

On July 23, 2020, Caltrans and IDOT requested a waiver<sup>1</sup> from FRA's Buy America requirement for up to 238 workstation tables. Due to delays related to the continuing pandemic, Caltrans and IDOT increased the request to 615. For the reasons stated below, FRA grants a non-availability waiver to Caltrans and IDOT.

## **BUY AMERICA REQUIREMENT**

With certain exceptions, FRA's Buy America Act requires that "the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C. 22905(a)(1). FRA's requirements apply without regard to the source of funds. If Caltrans and IDOT do not receive a waiver, they may not acquire goods for use in the Project that are not consistent with Section 22905(a)(1), even if they do not propose to use Federal funds. However, FRA may waive this requirement if it determines:

(A) applying [FRA's Buy America requirements] would be inconsistent with the public interest; (B) the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality; (C) rolling stock or power train equipment cannot be bought and delivered in the United States within a

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<sup>1</sup> The Caltrans and IDOT waiver request is available at: <https://railroads.dot.gov/elibrary/calidot-workstation-table-buy-america-waiver-request>.

reasonable time; or (D) including domestic material will increase the cost of the overall project by more than 25 percent.

In addition to the Buy America statute, FRA's action is subject to Executive Order 14005 *Ensuring the Future is Made in All of America by All of America's Workers*, 86 FR 7475 (January 28, 2021). Consistent with Executive Order 14005, FRA evaluated the waiver request, and sought input from the public, to determine whether Caltrans and IDOT had sought to maximize the use of goods, products, and materials produced in the United States.

## **FINDINGS**

In a letter to FRA, dated July 23, 2020, Caltrans and IDOT described the need for workstation tables, the steps taken to identify domestically sourced tables, and the harm that would result in the absence of a waiver. FRA evaluated the information provided and made the following findings.

### *A. COVID-19 pandemic*

As described in the request, the non-availability giving rise to the need for a waiver is due to effects from the COVID-19 pandemic. Prior to March 2020, Siemens entered into a contract with Baker Bellfield, a U.K.-based manufacturer, to establish a manufacturing facility in Sacramento, California so that Baker Bellfield could manufacture Buy-America-compliant workstation tables for the Project. However, due to restrictions relating to the COVID-19 pandemic, Baker Bellfield is not able to localize in time to meet the Project's production schedule. Thus, Siemens increased its initial request from 238 to 615 workstation tables from Baker Bellfield's facility in the U.K. to meet the production schedule. These tables would not be compliant with FRA's Buy America requirement and would require a waiver.

### *B. There is no domestic source of workstation tables that meet the PRIIA Specification.*

In accordance with the Passenger Rail Investment and Improvement Act of 2008, and the FRA grant agreement, the single-level railcars must comply with the 305-003 Rev A Single Level Passenger Car Technical Specification (PRIIA Specification).

SCOA and Siemens conducted an intensive search of domestic suppliers who could either meet the PRIIA Specification with an existing design or develop a completely new table. However, they could not find a domestic table supplier with the proven passenger rail interior component modeling and structural simulation expertise and who could produce a workstation table that met the PRIIA Specification. While Siemens initially identified a domestic source for workstation tables, which were previously installed in railcars for another project, after testing and modeling, Siemens determined the tables could not be configured to meet the required safety and design standards. Ultimately, Baker Bellfield's workstation tables are the only workstation tables that demonstrated passing simulated results and are expected to comply with the PRIIA Specification when configured for use in the Siemens railcar. Therefore, Siemens developed a plan to locate a Baker Bellfield facility in Sacramento, California, to produce the workstation tables. The workstation tables manufactured at the Baker Bellfield facility in Sacramento would have complied with FRA's Buy America requirement.

However, due to the COVID-19 pandemic, Baker Bellfield's localization efforts have been delayed. To address the current non-availability of compliant workstation tables, and to avoid potential further delays in the railcar delivery, Siemens proposes to purchase up to 615 tables from Baker Bellfield's facility in the UK to meet production and delivery schedules.

To keep production lines running, Caltrans and IDOT accepted delivery of incomplete railcars. The incomplete cars cannot enter revenue service because they do not have workstation tables. Currently, the incomplete cars are being stored by Caltrans or IDOT, as applicable, until PRIIA-compliant workstation tables are available. As a

result, Caltrans and IDOT have incurred costs to store the railcars and may incur additional costs, such as extending the lease of the existing fleet. However, if the waiver is granted, Siemens can quickly install the Baker Bellfield tables and the cars can enter revenue service.

As soon as it is able, Baker Bellfield will complete localization of its facility in Sacramento, California, which will create a new domestic supply of workstation tables for use in future projects.

*C. Harm would result if a waiver is not granted.*

According to Caltrans and IDOT, if a waiver is not granted, the vehicles now being manufactured could not be used for revenue service and would need to be stored at Caltrans and IDOT commissioning sites, waiting for the availability of new tables. The cost of storage is variable, becoming higher as the number of cars needing storage increases and the remaining storage spaces decrease. For IDOT, costs are estimated to be \$39,000 (subject to site selection and owner's confirmation) for storage of up to 40 IDOT Venture cars per year. At the ACE facility in Stockton, California, the San Joaquin Regional Rail Commission will charge Siemens \$250 per day per railcar for storage of cars not in revenue service. These costs do not include the costs for delayed manufacturing, retrofitting existing cars, delays to revenue service, and lost warranty time. If Caltrans and IDOT are unable to store the railcars, Siemens would stop production of the railcars as it does not have capacity to store the railcars onsite. If FRA denied the request, Siemens would not be able to deliver single-level cars that meet the required specifications until after the pandemic-related restrictions are removed, significantly delaying the Project. Caltrans and IDOT would also incur significant costs related to the delay and storage of the railcars.

Approving the waiver would help mitigate the negative effects of the COVID-19 pandemic by quickly installing workstation tables in railcars that can be put into revenue

operations, which will maximize passenger safety, minimize implementation impacts and overall costs, and mitigate schedule issues for delivery and revenue service availability. In addition, allowing the use of the Baker Bellfield tables would allow the Caltrans and IDOT procurement to maintain its priority position in Siemens' production schedule, and allow the Project to remain on schedule. Caltrans and IDOT provided additional information to FRA that domestically-sourced subcomponents were used in the Project. Generally, FRA does not require the use of domestic subcomponents, and the use of domestic subcomponents increases the overall amount of domestic material used in the Project. On the basis of this information, FRA concludes this action is consistent with the policy in Executive Order 14005 to maximize "the use of goods, products, and materials produced in, and services offered in, the United States." FRA further concludes that denying the requested waiver would not increase the use of goods, products, and materials produced in the United States.

## **DETERMINATION**

FRA has determined a "non-availability" waiver is appropriate under 49 U.S.C. 22905(a)(2)(B) for up to 615 workstation tables, because workstation tables meeting the PRIIA Specification are not currently "produced in a sufficient and reasonably available amount or are not of a satisfactory quality." FRA bases this determination on the following:

- There is currently no domestic source of workstation tables that meet the PRIIA Specification when configured for the Caltrans and IDOT railcars and domestic tables cannot be delivered within a reasonable time.
- But for the COVID-19 pandemic, Siemens would have used workstation tables that complied with FRA's Buy America requirement.
- On December 31, 2020, FRA provided public notice of the Caltrans and IDOT waiver request and a 15-day opportunity for comment. FRA also emailed the

notice to over 6,000 recipients that requested Buy America notices through

“GovDelivery.” FRA did not receive any comments.

This waiver only applies to Siemens’s acquisition and installation of up to 615 workstation tables for use in the Project.

FRA is providing notice of such finding and an opportunity for public comment after which this waiver will become effective.

Issued in Washington, D.C.

**Amitabha Bose,**

*Deputy Administrator.*

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